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THE DRED SCOTT CASE.

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[CONCLUSION OF JUDGE MCLEAN'S OPINION.]

Now, if a slave abscond, he may be reclaimed; but if he accompany his master into a State or Territory where slavery is prohibited, such slave cannot be said to have left the service of his master where his services were legalized. And if slavery be limited to the range of the territorial laws, how can the slave be coerced to serve in a State or Territory, not only without the authority of law, but against its express provisions? What gives the master the right to control the will of his slave? The local law, which exists in some form. But where there is no such law, can the master control the will of the slave by force? Where no slavery exists, the presumption, without regard to color, is in favor of freedom. Under such a jurisdiction, may the colored man be levied on as the property of his master by a creditor? On the decease of the master, does the slave descend to his heirs as property? Can the master sell him? Any one or all of these acts may be done to the slave, where he is legally held to service. But where the law does not confer this power it cannot be exercised.

Lord Mansfield held that a slave brought into England was free. Lord Stowell agreed with Lord Mansfield in this respect, and that the slave could not be coerced in England; but on her voluntary return to Antigua, the place of her slave domicil, her former status attached. The law of England did not prohibit slavery, but did not authorize it. The jurisdiction which prohibits slavery is much stronger in behalf of the slave within it than where it only does not authorize it.

By virtue of what law is it that a master may take his slave into free territory, and exact from him the duties of a slave? The law of the Territory does not sanction it. No authority can be claimed under the constitution of the United States, or any law of Congress. Will it be said that the slave is taken as property, the same as other property which the master may own? To this I answer that colored persons are made property by the law of the State, and no such power has been given to Congress. Does the master carry with him the law of the State from which he removes into the Territory? and does that enable him to coerce his slave in the Territory? Let us test this theory. If this may be done by a master from one slave State, it may be done by a master from every other slave State. This right is supposed to be connected with the person of the master by virtue of the local law. Is it transferable? May it be negotiated as a promissory note or bill of exchange? If it be assigned to a man from a free State, may he coerce the slave by virtue of it? What shall this thing be denominated? Is it personal or real property? Or is it an indefinable fragment of sovereignty, which every person carries with him from his late domicil? One thing is certain, that its origin has been very recent, and it is unknown to the laws of any civilized country.

A slave is brought to England from one of its islands, where slavery was introduced and maintained by the mother country. Although there is no law prohibiting slavery in England, yet there is no law authorizing it; and for near a century its courts have declared that the slave there is free from the coercion of the master. Lords Mansfield and Stowell agree upon this point, and there is no dissenting authority.

There is no other description of property which was not protected in England brought from one of its slave islands. Does not this show that property in a human being does not arise from nature or from the common law, but, in the language of this court, "it is a mere municipal regulation, founded upon and limited to the range of the territorial laws?" This decision is not a mere argument, but it is the end of the law, in regard to the extent of slavery. Until it shall be overturned, it is not a point for argument; it is obligatory on myself and my brethren, and on all judicial tribunals over which this court exercises an appellate power.

It is said the Territories are common property of the States, and that every man has a right to go there with his property. This is not controverted. But the court say a slave is not property beyond the operation of the local law which makes him such. Never was a truth more authoritatively and justly uttered by man. Suppose a master of a slave in a British island owned a million of property in England, would that authorize him to take his slaves with him to England? The constitution, in express terms, recognises the *status* of slavery as founded on the municipal law: "No person held to service or labor in one State, *under the laws thereof*, escaping into another, shall," &c. Now, unless the fugitive escape from a place where, by the municipal law, he is held to labor, this provision affords no remedy to the master. What can be more conclusive than this? Suppose a slave escape from a Territory where slavery is not authorized by law, can he be reclaimed?

In this case a majority of the court have said that a slave may be taken by his master into a Territory of the United States, the same as a horse, or any other kind of property. It is true, this was said by the court, as also many other things, which are of no authority. Nothing that has been said by them, which has not a direct bearing on the jurisdiction of the court, against which they decided, can be considered as authority. I shall certainly not regard it as such. The question of jurisdiction, being before the court, was decided by them authoritatively, but nothing beyond that question. A slave is not a mere chattel. He bears the impress of his Maker, and is amenable to the laws of God and man; and he is destined to an endless existence.

Under this head I shall chiefly rely on the decisions of the supreme courts of the southern States, and especially of the State of Missouri.

In the first and second sections of the sixth article of the constitution of Illinois it is declared that neither slavery nor involuntary servitude shall hereafter be introduced into this State, otherwise than for the punishment of crimes whereof the party shall have been duly convicted; and in the second section it is declared that any violation of this article shall effect the emancipation of such person from his obligation to service. In Illinois a right of transit through the State is given the master with his slaves. This is a matter which, as I suppose, belongs exclusively to the State.

The supreme court of Illinois, in the case of Jarrot *vs.* Jarrot, (2 Gilmer, 7,) said:

"After the conquest of this territory by Virginia, she ceded it to the United States, and stipulated that the titles and possessions, rights and liberties, of the French settlers, should be guarantied to them. This, it has been contended, secured them in the possession of those negroes as slaves which they held before that time, and that neither Congress nor the convention had power to deprive them of it; or, in other words, that the ordinance and constitution should not be so interpreted and understood as applying to such slaves when it is therein declared that there shall be neither slavery nor involuntary servitude in the Northwest Territory, nor in the State of Illinois, otherwise than in the punishment of crimes. But it was held that those rights could not be thus protected, but must yield to the ordinance and constitution."

The first slave case decided by the supreme court of Missouri, contained in the reports, was Winny *vs.* Whitesides, (1 Missouri Rep., 473,) at October term, 1824. It appeared that, more than twenty-five years before, the defendant, with her husband, had removed from Carolina to Illinois, and brought with them the plaintiff; that they continued to reside in Illinois three or four years, retaining the plaintiff as a slave; after which, they removed to Missouri, taking her with them.

The court held, that if a slave be detained in Illinois until he be entitled to freedom, the right of the owner does not revive when he finds the negro in a slave State.

That when a slave is taken to Illinois by his owner, who takes up his residence there, the slave is entitled to freedom.

In the case of Lagrange *vs.* Chouteau, (2 Missouri Rep., 20, at May term, 1828,) it was decided that the ordinance of 1787 was intended as a fundamental law for those who may choose to live under it, rather than as a penal statute.

That any sort of residence contrived or permitted by the legal owner of the slave, upon the faith of secret trusts or contracts, in order to defeat or evade the ordinance, and thereby introduce slavery *de facto*, would entitle such slave to freedom.

In Julia *vs.* McKinney, (3 Missouri Rep., 279,) it was held, where a slave was settled in the State of Illinois, but with an intention on the part of the owner to be removed at some future day, that hiring said slave to a person to labor for one or two days, and receiving pay for the hire, the slave is entitled to her freedom under the second section of the sixth article of the constitution of Illinois.

Rachel *vs.* Walker (4 Missouri Rep., 350, June term, 1836) is a case involving, in every particular, the principles of the case before us. Rachel sued for her freedom; and it appeared that she had been bought as a slave in Missouri by Stockton, an officer of the army, taken to Fort Snelling, where he was stationed, and she was retained there as a slave a year; and then Stockton removed to Prairie du Chien, taken Rachel with him as a slave, where he continued to hold her three years, and then he took her to the State of Missouri, and sold her as a slave.

"Fort Snelling was admitted to be on the west side of the Mississippi river, and north of the State of Missouri, in the territory of the United States. That Prairie du Chien was in the Michigan Territory, on the east side of the Mississippi river. Walker, the defendant, held Rachel under Stockton."

The court said, in this case:

"The officer lived in Missouri Territory at the time he bought the slave; he sent to a slaveholding country and procured her; this was his voluntary act, done without any other reason than that of his convenience; and he and those claiming under him must be holden to abide the consequences of introducing slavery both in Missouri Territory and Michigan, contrary to law; and on that ground Rachel was declared to be entitled to freedom."

In answer to the argument that, as an officer of the army, the master had a right to take his slave into free territory, the court said no authority of law or the government compelled him to keep the plaintiff there as a slave.

"Shall it be said that because an officer of the army owns slaves in Virginia, that when, as officer and soldier, he is required to take the command of a fort in the non-slaveholding States and Territories, he thereby has a right to take with him as many slaves as will suit his interest or convenience? It surely cannot be law. If this be true, the court say, then it is also true that the convenience, or supposed convenience, of the officer repeals, as to him and others who have the same character, the ordinance and the act of 1821, admitting Missouri into the Union, and also the prohibition of the several laws and constitutions of the non-slaveholding States."

In Wilson *vs.* Melvin, (4 Missouri R., 592,) it appeared the defendant left Tennessee with an intention of residing in Illinois, taking his negroes with him. After a month's stay in Illinois he took his negroes to St. Louis, and hired them; then returned to Illinois. On these facts, the inferior court instructed the jury that the defendant was a sojourner in Illinois. This the Supreme Court held was error, and the judgment was reversed.

The case of Dred Scott *vs.* Emerson (15 Missouri R., 682, March term, 1852) will now be stated. This case involved the identical question before us, Emerson having, since the hearing, sold the plaintiff to Sandford, the defendant.

Two of the judges ruled the case, the chief justice dissenting. It cannot be improper to state the grounds of the opinion of the court, and of the dissent.

The court say: "Cases of this kind are not strangers in our court. Persons have been frequently here adjudged to be entitled to their freedom on the ground that their masters held them in slavery in Territories or States in which that institution is prohibited. From the first case decided in our court, it might be inferred that this result was brought about by a presumed assent of the master, from the fact of having voluntarily taken his slave to a place where the relation of master and slave did not exist. But subsequent cases base the right to 'exact the forfeiture of emancipation,' as they term it, on the ground, it would seem, that it was the duty of the courts of this State to carry into effect the constitution and laws of other States and Territories, regardless of the rights, the policy, or the institutions of the people of this State."

And the court say that the States of the Union, in their municipal concerns, are regarded as foreign to each other; that the courts of one State do not take notice of the laws of other States, unless proved as facts, and that every State has the right to determine how far its comity to other States shall extend; and it is laid down that when there is no act of manumission decreed to the free State the courts of the slave States cannot be called to give effect to the law of the free State. Comity, it alleges, between States depends upon the discretion of both, which may be varied by circumstances. And it is declared by the court "that times are not as they were when the former decisions on this subject were made." Since then not only individuals, but States, have been possessed with a dark and fell spirit in relation to slavery, whose gratification is sought in the pursuit of measures whose inevitable consequence must be the overthrow and destruction of our government. Under such circumstances, it does not behoove the State of Missouri to show the least countenance to any measure which might gratify this spirit. She is willing to assume her full responsibility for the existence of slavery within her limits, nor does she seek to share or divide it with others.

Chief Justice Gamble dissented from the other two judges. He says:

"In every slaveholding State in the Union, the subject of emancipation is regulated by statute; and the forms are prescribed in which it shall be effected. Whenever the forms required by the laws of the State in which the master and slave are resident are complied with, the emancipation is complete, and the slave is free. If the right of the person thus emancipated is subsequently drawn in question in another State, it will be ascertained and determined by the law of the State in which the slave and his former master resided; and when it appears that such law has been complied with, the right to freedom will be fully sustained in the courts of all the slaveholding States, although the act of emancipation may not be in the form required by law in which the court sits.

"In all such cases, courts continually administer the law of the country where the right was acquired; and when that law becomes known to the court, it is just as much a matter of course to decide the rights of the parties according to its requirements, as it is to settle the title of real estate situated in our State by its own laws."

This appears to me a most satisfactory answer to the argument of the court. Chief Justice continues:

"The perfect equality of the different States lies at the foundation of the Union. As the institution of slavery in the States is one over which the constitution of the United States gives no power to the general government, it is left to be adopted or rejected by the several States, as they think best; nor can any one State, or number of States, claim the right to interfere with any other State upon the question of admitting or excluding this institution.

"A citizen of Missouri, who removes with his slave to Illinois, has no right to complain that the fundamental law of that State to which he removes, and in which he makes his residence, dissolves the relation between him and his slave. It is as much his own voluntary act as if he had executed a deed of emancipation. No one can pretend ignorance of this constitutional provision, and," he says, "the decisions which have heretofore been made in this State, and in many other slaveholding States, give effect to this and other similar provisions, on the ground that the master, by making the free State the residence of his slave, has submitted his right to the operation of the law of such State; and this," he says, "is the same in law as a regular deed of emancipation."

He adds:

"I regard the question as conclusively settled by repeated adjudications of this court, and, if I doubted or denied the propriety of those decisions, I would not feel myself any more at liberty to overturn them than I would any other series of decisions by which the law of any other question was settled. 'There is with me,' he says, 'nothing in the law relating to slavery which distinguishes it from the law on any other subject, or allows any more accommodation to the temporary public excitements which are gathered around it.'"

"In this State," he says, "it has been recognised from the beginning of the government as a correct position in law that a master who takes his slave to reside in a State or Territory where slavery is prohibited thereby emancipates his slave." These decisions, which come down to the year 1837, seemed to have so fully settled the question, that since that time there has been no case bringing it before the court for any reconsideration until the present. In the case of Winny *vs.* Whitesides, the question was made in the argument, "whether one nation would execute the penal laws of another," and the court replied in this language, (Huberus, quoted in 4 Dallas,) which says, "personal rights or disabilities obtained or communicated by the laws of any particular place are of a nature which accompany the person wherever he goes;" and the Chief Justice observed, in the case of Rachel *vs.* Walker, the act of Congress called the Missouri Compromise was held as operative as the ordinance of 1787.

When Dred Scott, his wife and children, were removed from Fort Snelling to Missouri, in 1838, they were free, as the law was then settled, and continued for fourteen years afterwards, up to 1852, when the above decision was made. Prior to this, for nearly thirty years, as Chief Justice Gamble declares, the residence of a master with his slave in the State of Illinois, or in the territory north of Missouri, where slavery was prohibited by the act called the Missouri Compromise, would manumit the slave as effectually as if he had executed a deed of emancipation; and that an officer of the army who takes his slave into that State or Territory, and holds him there as a slave, liberates him the same as any other citizen—and down to the above time it was settled by numerous and uniform decisions; and that on the return of the slave to Missouri his former condition of slavery did not attach. Such was the settled law of Missouri until the decision of Scott and Emerson.

In the case of Sylvia *vs.* Kirby, (17 Misso. Rep., 434,) the court followed the above decision, observing it was similar in all respects to the case of Scott and Emerson.

This court follows the established construction of the statutes of a State by its supreme court. Such a construction is considered as a part of the statute, and we follow it to avoid two rules of property in the same State. But we do not follow the decisions of the supreme court of a State beyond the statutory construction as a rule of decision for this court. State decisions are always viewed with respect and treated as authority; but we follow the settled construction of the statutes, not because it is of binding authority, but in pursuance of a rule of judicial policy.

But there is no pretence that the case of Dred Scott *vs.* Emerson turned upon the construction of a Missouri statute; nor was there any established rule of property which could have rightfully influenced the decision. On the contrary, the decision overruled the settled law for near thirty years.

This is said by my brethren to be a Missouri question; but there is nothing which gives it this character, except that it involves the right to persons claimed as slaves who reside in Missouri, and the decision was made by the supreme court of that State. It involves a right claimed under an act of Congress and the constitution of Illinois, and which cannot be decided without the consideration and construction of those laws. But the supreme court of Missouri held, in this case, that it will not regard either of those laws, without which there was no case before it; and Dred Scott, having been a slave, remains a slave. In this respect it is admitted this is a Missouri question—a case which has but one side, if the act of Congress and the constitution of Illinois are not recognised.

And does such a case constitute a rule of decision for this court—a case to be followed by this court? The course of decision so long and so uniformly maintained established a comity or law between Missouri and the free States and Territories where slavery was prohibited, which must be somewhat regarded in this case. Rights sanctioned for twenty-eight years ought not and cannot be repudiated, with any semblance of justice, by one or two decisions, influenced, as declared, by a determination to counteract the excitement against slavery in the free States.

The courts of Louisiana having held, for a series of years, that where a master took his slave to France, or any free State, he was entitled to freedom, and that on bringing him back the status of slavery did not attach, the legislature of Louisiana declared by an act that the slave should not be made free under such circumstances. This regulated the rights of the master from the time the act took effect. But the decision of the Missouri court, reversing a former decision, affects all previous decisions, technically made on the same principles, unless such decisions are protected by the lapse of time or the statute of limitations. Dred Scott and his family, beyond all controversy, were free under the decisions made for twenty-eight years, before the case of Scott *vs.* Emerson. This was the undoubted law of Missouri for fourteen years after Scott and his family were brought back to that State. And the grave question arises, whether this law may be so disregarded as to enslave free persons? I am strongly inclined to think that a rule of decision so well settled as not to be questioned cannot be annulled by a single decision of the court. Such rights may be inoperative under the decision in future; but I cannot well perceive how it can have the same effect in prior cases.

It is admitted that when a former decision is reversed the technical effect of the judgment is to make all previous adjudications on the same question erroneous. But the case before us was not that the law had been erroneously construed, but that, under the circumstances which then existed, that law would not be recognised; and the reason for this is declared to be the excitement against the institution of slavery in the free States. While I lament this excitement as much as any one, I cannot assent that it shall be made a basis of judicial action.

In 1816 the common law, by statute, was made a part of the law of Missouri; and that includes the great principles of international law. These principles cannot be abrogated by judicial decisions. It will require the same exercise of power to abolish the common law as to introduce it. International law is founded in the opinions generally received and acted on by civilized nations, and enforced by moral sanctions. It becomes a more authoritative system when it results from special compacts, founded on modified rules, adapted to the exigencies of human society; it is, in fact, an international morality, adapted to the best interests of nations. And in regard to the States of this Union on the subject of slavery, it is eminently fitted for a rule of action, subject to the federal constitution. "The laws of nations are but the natural rights of man applied to nations." (Vattel.)

If the common law have the force of a statutory enactment in Missouri, it is clear, as it seems to me, that a slave who, by a residence in Illinois in the service of his master, becomes entitled to his freedom, cannot again be reduced to slavery by returning to his former domicil in a slave State. It is unnecessary to say what legislative power might do by a general act in such a case, but it would be singular if a freeman could be made a slave by the exercise of a judicial discretion. And it would be still more extraordinary if this could be done, not only in the absence of special legislation, but in a State where the common law is in force.

It is supposed by some that the third article in the treaty of cession of Louisiana to this country by France, in 1803, may have some bearing on this question. The article referred to provides "that the inhabitants of the ceded territory shall be incorporated into the Union, and enjoy all the advantages of citizens of the United States, and in the mean time they shall be maintained and protected in the free enjoyment of their liberty, property, and the religion they profess."

As slavery existed in Louisiana at the time of the cession, it is supposed this is a guarantee that there should be no change in its condition.

The answer to this is, in the first place, that such a subject does not belong to the treaty-making power; and any such arrangement would have been nugatory. And, in the second place, by no admissible construction can the guarantee be carried further than the protection of property in slaves at that time in the ceded territory. And this has been complied with. The organization of the slave States of Louisiana, Missouri, and Arkansas embraced every slave in Louisiana at the time of the cession. This removes every ground of objection under the treaty. There is therefore no pretence, growing out of the treaty, that any part of the territory of Louisiana, as ceded, beyond the organized States, is slave territory.

Under the fifth head, we were to consider whether the *status* of slavery attached to the plaintiff and wife on their return to Missouri.

This doctrine is not asserted in the late opinion of the supreme court of Missouri, and up to 1852 the contrary doctrine was uniformly maintained by that court.

In its late decision the court say that it will not give effect in Missouri to the laws of Illinois, or the law of Congress called the Missouri Compromise. This was the effect of the decision, though its terms were, that the court would not take notice, judicially, of those laws.

In 1851 the court of appeals of South Carolina recognised the principle that a slave, being taken to a free State, became free. (Commonwealth *vs.* Pleasants, 10 Leigh Rep., 697.) In Betty *vs.* Horton, the court of appeals held that the freedom of the slave was acquired by the action of the laws of Massachusetts, by the said slave being taken there. (5 Leigh Rep., 615.)

The slave States have generally adopted the rule that where the master, by a residence with his slave in a State or Territory where slavery is prohibited, the slave was entitled to his freedom everywhere. This was the settled doctrine of the supreme court of Missouri. It has been so held in Mississippi, in Virginia, in Louisiana, formerly in Kentucky, Maryland, and in other States.

The law, where a contract is made and is to be executed, governs it. This does not depend upon comity, but upon the law of the contract. And if, in the language of the supreme court of Missouri, the master, by taking his slave to Illinois, and employing him there as a slave, emancipates him as effectually as by a deed of emancipation, is it possible that such an act is not matter for adjudication in any slave State where the master may take him? Does not the master assent to the law when he places himself under it in a free State?

The States of Missouri and Illinois are bounded by a common line. The one prohibits slavery, the other admits it. This has been done by the exercise of that sovereign power which appertains to each. We are bound to respect the institutions of each, as emanating from the voluntary action of the people. Have the people of either any right to disturb the relations of the other? Each State rests upon the basis of its own sovereignty, protected by the constitution. Our Union has been the foundation of our prosperity and national glory. Shall we not cherish and maintain it? This can only be done by respecting the legal rights of each State.

If a citizen of a free State shall entice or enable a slave to escape from the service of his master the law holds him responsible, not only for the loss of the slave, but he is liable to be indicted and fined for the misdemeanor. And I am bound here to say that I have never found a jury in the four States which constitute my circuit which have not sustained this law, where the evidence required them to sustain it. And it is proper that I should also say, that more cases have arisen in my circuit, by reason of its extent and locality, than in all other parts of the Union. This has been done to vindicate the sovereign rights of the southern States, and protect the legal interests of our brethren of the South.

Let these facts be contrasted with the case now before the court. Illinois has declared in the most solemn and impressive form that there shall be neither slavery nor involuntary servitude in that State, and that any slave brought into it, with a view of becoming a resident, shall be emancipated. And effect has been given to this provision of the constitution by the decision of the Supreme Court of that State. With a full knowledge of these facts, a slave is brought from Missouri to Rock Island, in the State of Illinois, and is retained there as a slave for two years, and then taken to Fort Snelling, where slavery is prohibited by the Missouri-compromise act, and there he is detained two years longer in a state of slavery. Harriet, his wife, was also kept at the same place four years as a slave, having been purchased in Missouri. They were then removed to the State of Missouri and sold as slaves; and in the action before us they are not only claimed as slaves, but a majority of my brethren have held that on their being returned to Missouri the status of slavery attached to them.

I am not able to reconcile this result with the respect due to the State of Illinois. Having the same rights of sovereignty as the State of Missouri in adopting a constitution, I can perceive no reason why the institutions of Illinois should not receive the same consideration as those of Missouri. Allowing to my brethren the same right of judgment that I exercise myself, I must be permitted to say that it seems to me the principle laid down will enable the people of a slave State to introduce slavery into a free State, for a longer or shorter time, as may suit their convenience; and by returning the slave to the State whence he was brought, by force or otherwise, the status of slavery attaches, and protects the rights of the master, and defies the sovereignty of the free State. There is no evidence before us that Dred Scott and his family returned to Missouri voluntarily. The contrary is inferable from the agreed case: "In the year 1838 Dr. Emerson removed the plaintiff and said Harriet, and their daughter Eliza, from Fort Snelling to the State of Missouri, where they have ever since resided." This is the agreed case; and can it be inferred from this that Scott and family returned to Missouri voluntarily? He was removed; which shows that he was passive, as a slave, having exercised no volition on the subject. He did not resist the master by absconding or force. But that was not sufficient to bring him within Lord Stowell's decision; he must have acted voluntarily. It would be a mockery of law and an outrage on his rights to coerce his return, and then claim that it was voluntary, and on that ground that his former *status* of slavery attached.

If the decision be placed on this ground, it is a fact for a jury to decide, whether the return was voluntary? or else the fact should be distinctly admitted. A presumption against the plaintiff in this respect, I say with confidence, is not authorized from the facts admitted.

In coming to the conclusion that a voluntary return by Grace to her former domicil, slavery attached, Lord Stowell took great pains to show that England forced slavery upon her colonies, and that it was maintained by numerous acts of Parliament and public policy; and, in short, that the system of slavery was not only established by Great Britain in her West Indian colonies, but that it was popular and profitable to many of the wealthy and influential people of England, who were engaged in trade, or owned and cultivated plantations in the colonies. No one can read his elaborate views, and not be struck with the great difference between England and her colonies and the free and slave States of this Union. While slavery in the colonies of England is subject to the power of the mother country, our States, especially in regard to slavery, are independent, resting upon their own sovereignties, and subject only to international laws, which apply to independent States.

In the case of Williams, who was a slave in Granada, having run away, came to England, Lord Stowell said: "The four judges all concur in this: that he was a slave in Granada, though a free man in England, and he would have continued a free man in all other parts of the world except Granada."

Strader *vs.* Graham (10 Howard, 82, and 18 Curtis, 305) has been cited as having a direct bearing in the case before us. In that case the court say: "It was exclusively in the power of Kentucky to determine for itself whether the employment of slaves in another State should or should not make them free on their return." No question was before the court in that case, except that of jurisdiction. And any opinion given on any other point is *obiter dictum*, and of no authority. In the conclusion of his opinion, the Chief Justice said: "In every view of the subject, therefore, this court has no jurisdiction of the case, and the writ of error must on that ground be dismissed."

In the case of Spencer *vs.* Negro Dennis, (8 Gill's Rep., 321,) the court say:

"Once free, and always free, is the maxim of Maryland law upon the subject. Freedom having once vested, by no compact between the master and the liberated slave, nor by any condition subsequent, attached by the master to the gift of freedom, can a state of slavery be reproduced."

In Hunter *vs.* Bulcher, (1 Leigh, 172:)

"By a statute of Maryland of 1796, all slaves brought into that State to reside are declared free; a Virginian-born slave is carried by his master to Maryland; the master settled there, and keeps the slave there in bondage for twelve years, the statute in force all the time; then he brings him as a slave to Virginia, and sells him there. Adjudged, in an action brought by the man against the purchaser, that he is free."

Judge Kerr, in the case, says:

"Agreeing, as I do, with the general view taken in this case by my brother Green, I would not add a word but to mark the exact extent to which I mean to go. The law of Maryland having enacted that slaves carried into that State for sale or to reside shall be free, and the owner of the slave here having carried him to Maryland, and voluntarily submitting himself and the slave to that law, it governs the case."

In every decision of a slave case prior to that of Dred Scott *vs.* Emerson, the supreme court of Missouri considered it as turning upon the constitution of Illinois, the ordinance of 1787, or the Missouri-compromise act of 1820. The court treated these acts as in force, and held itself bound to execute them by declaring the slave to be free who had acquired a domicil under them with the consent of his master.

The late decision reversed this whole line of adjudication, and held that neither the constitution and laws of the States, nor acts of Congress in relation to Territories, could be judicially noticed by the supreme court of Missouri. This is believed to be in conflict with the decisions of all the courts in the southern States, with some exceptions of recent cases.

In Marie Louise *vs.* Morat *et al.*, (9 Louisiana Rep., 475,) it was held, where a slave having been taken to the kingdom of France or other country by the owner, where slavery is not tolerated, operates on the condition of the slave, and produces immediate emancipation; and that, where a slave thus becomes free, the master cannot reduce him again to slavery.

Josephine *vs.* Poultney, (Louisiana Annual Rep., 329,) "where the owner removes with a slave into a State in which slavery is prohibited, with the intention of residing there, the slave will be thereby emancipated, and their subsequent return to the State of Louisiana cannot restore the relation of master and slave." To the same import are the cases of Smith *vs.* Smith, (13 Louisiana Rep., 441; Thomas *vs.* Generis, Louisiana Rep., 483; Harry *et al. vs.* Decker and Hopkins, Walker's Mississippi Rep., 36.) It was held that, "slaves within the jurisdiction of the Northwestern Territory became freemen by virtue of the ordinance of 1787, and can assert their claim to freedom in the courts of Mississippi." (Griffith *vs.* Fanny, 1 Virginia Rep., 143.) It was decided that a negro held in servitude in Ohio, under a deed executed in Virginia, is entitled to freedom by the constitution of Ohio.

The case of Rhodes *vs.* Bell (2 Howard, 307; 15 Curtis, 152) involved the main principle in the case before us. A person residing in Washington city purchased a slave in Alexandria, and brought him to Washington. Washington continued under the law of Maryland, Alexandria under the law of Virginia. The act of Maryland of November, 1796, (2 Maxcy's Laws, 351,) declared any one who shall bring any negro, mulatto, or other slave, into Maryland, such slave should be free. The above slave, by reason of his being brought into Washington city, was declared by this court to be free. This, it appears to me, is a much stronger case against the slave than the facts in the case of Scott.

In Bush *vs.* White, (3 Monroe, 104,) the court say:

"That the ordinance was paramount to the territorial laws, and restrained the legislative power there as effectually as a constitution in an organized State. It was a public act of the legislature of the Union, and a part of the supreme law of the land; and, as such, this court is as much bound to take notice of it as it can be of any other law."

In the case of Rankin *vs.* Lydia, before cited, Judge Mills, speaking for the court of appeals of Kentucky, says:

"If, by the positive provision in our code, we can and must hold our slaves in the one case, and statutory provisions equally positive decide against that right in the other, and liberate the slave, he must, by an authority equally imperious, be declared free. Every argument which supports the right of the master on one side, based upon the force of written law, must be equally conclusive in favor of the slave when he can point out in the statute the clause which secures his freedom."

And he further said:

"Free people of color in all the States are, it is believed, quasi citizens, or, at least, denizens. Although none of the States may allow them the privilege of office and suffrage, yet all other civil and conventional rights are secured to them; at least, such rights were evidently secured to them by the ordinance in question for the government of Indiana. If these rights are vested in that or any other portion of the United States, can it be compatible with the spirit of our confederated government to deny their existence in any other part? Is there less comity existing between State and State, or State and Territory, than exists between the despotic governments of Europe?"

These are the words of a learned and great judge, born and educated in a slave State.

I now come to inquire, under the sixth and last head, "whether the decisions of the supreme court of Missouri, on the question before us, are binding on this court?"

While we respect the learning and high intelligence of the State courts, and consider their decisions, with others, as authority, we follow them only where they give a construction to the State statutes. On this head, I consider myself fortunate in being able to turn to the decision of this court, given by Mr. Justice Grier, in Pease *vs.* Peck, a case from the State of Michigan, (18 Howard, 589,) decided in December term, 1855. Speaking for the court, Judge Grier said:

"We entertain the highest respect for that learned court, (the supreme court of Michigan,) and in any question affecting the construction of their own laws, where we entertain any doubt, would be glad to be relieved from doubt and responsibility by reposing on their decision. There are, it is true, many dicta to be found in our decisions, averring that the courts of the United States are bound to follow the decisions of the State courts on the construction of their own laws. But although this may be correct, yet a rather strong expression of a general rule, it cannot be received as the annunciation of a maxim of universal application. Accordingly, our reports furnish many cases of exceptions to it. In all cases where there is a settled construction of the laws of a State, by its highest judicature established by admitted precedent, it is the practice of the courts of the United States to receive and adopt it, without criticism or further inquiry. When the decisions of the State court are not consistent we do not feel bound to follow the last, if it is contrary to our own convictions; and much more is this the case where, after a long course of consistent decisions, some new light suddenly springs up, or an excited public opinion has elicited new doctrines subversive of former safe precedent."

These words, it appears to me, have a stronger application to the case before us than they had to the cause in which they were spoken as the opinion of this court; and I regret that they do not seem to be as fresh in the recollection of some of my brethren as in my own. For twenty-eight years the decisions of the supreme court of Missouri were consistent on all the points made in this case. But this consistent course was suddenly terminated, whether by some new light suddenly springing up or an excited public opinion, or both, it is not necessary to say. In the case of Scott *vs.* Emerson, in 1852, they were overturned and repudiated.

This, then, is the very case in which seven of my brethren declared they would not follow the last decision. On this authority I may well repose. I can desire no other or better basis.

But there is another ground which I deem conclusive, and which I will restate.

The supreme court of Missouri refused to notice the act of Congress or the constitution of Illinois, under which Dred Scott, his wife and children, claimed that they are entitled to freedom.

This being rejected by the Missouri court, there was no case before it, or least it was a case with only one side; and this is the case which, in the opinion of this court, we are bound to follow. The Missouri court disregards the express provisions of an act of Congress and the constitution of a sovereign State, both of which laws for twenty-eight years it had not only regarded, but carried into effect.

If a State court may do this on a question involving the liberty of a human being, what protection do the laws afford? So far from this being a Missouri question, it is a question, as it would seem, within the twenty-fifth section of the judiciary act, where a right to freedom being set up under the act of Congress, and the decision being against such right, it may be brought for revision before this court from the supreme court of Missouri.

I think the judgment of the court below should be reversed.

OUR NEW YORK CORRESPONDENCE.

NEW YORK, May 27, 1857.

The police affairs of the city have as yet put on no new face. The decision of the "general term of the supreme court" has been made, sustaining the new metropolitan police law. But the decision loses much of its power from the fact that but three of the judges held the general term. Two of these, Mitchell and Peabody, are black republicans, and it was the common talk that Peabody had, in advance, given his opinion in favor of the law, and had resolved to sustain it. Besides, he is the youngest judge on the bench—only about four months a judge—and is a candidate for re-election this fall; while Judge Mitchell has been imported from Brooklyn to give a judgment on a law made for us in Albany. And the judges of note and standing—Clarke and Davies—were not present, and took no part in the proceedings. And to this must be added the fact that Judge Roosevelt, the chief justice of the supreme court, gave, at the sitting, an elaborate opinion against the constitutionality of the law, and he is the only democrat that was on the bench at the time of the hearing. So that the decision amounts to just as much as one from Greeley or the black-republican committee of New York, and no more. The case now goes up to the court of appeals, and in a short time the whole matter will be at rest. But the conflict of jurisdiction goes on. No better proof can be given that the new police bill was a black-republican measure to control the city than the fact that that high priest of abolitionism, Thurlow Weed, came to the rescue of Simeon Draper, and took the chair at the meeting at the new police headquarters in White street. Draper made a clean breast of all his troubles, and told how he had attempted to get possession of the New York police stations, and could not succeed. The sight was an edifying one to see an Albany editor, with no authority, not even a sham one, presiding over a conclave held to rule the city—enforce an unconstitutional law—by which means those pirates could get hold of the city property.

The "Friends of Temperance," as they style themselves, met last night to see what can be done to make the new "excise law" efficient. The law does not seem to suit any one but the liquor-sellers, and it suits them only on the ground that it is so complicated, stringent, and absurd that its provisions cannot be enforced, and are, consequently, harmless.

The "call" for the meeting was a loud one. The hall was a large one. The meeting was a small one. The old party hacks were present. The old story about the enforcement of the law was told with variations. The law that could be enforced these men reject with disdain. The law they want is one that is unconstitutional. The rule to do all they can legally they trample beneath their feet. The aim they have in view is beyond their reach. So they waste their strength by beating the air, and in the mean time we have free trade in liquor all the week, Sunday included.

Dr. Cheever's church have got into a regular row. A meeting preliminary to the annual meeting was held last night. The animus of an excited caucus was present. As the deacons of the church are opposed to the ruinous course of the pastor, an effort is made to throw them over. To do this the established rules of the church were overthrown; and a debate, acrimonious and unchristian, took place; and, for a time, it seemed that the meeting would break up in a row. All this trouble, turmoil, row, bad feeling, and opposition, has been well-earned by their politico-abolition pastor. The fight is a good one, and the public look on to enjoy it. If men *will* be fools, the penalty must be paid.

The weather is delightful—warm and balmy. The streets of New York are in a deplorable condition. The amusements of the city are at a low ebb. Burton made an experiment the other night that he will not repeat. He took the rope-dancer, young Hengler, and gave him the part of Hamlet to commence his theatrical career with. He came down as he would if his tight-rope broke and laid him flat on his back on the stage. The failure was total and mortifying.

It is not true that Marshall has purchased Burton's theatre. No steps towards a sale have been taken.

MANHATTAN.

On the 12th instant Major Dashiel, paymaster in the United States army, and four men, were upset in a boat on Indian river, Florida, and came near being drowned, but were fortunately rescued. Major D. had with him a leather bag containing about $23,000 in gold for the payment of the troops on the Florida coast, which was lost. The Charleston Courier, from which we learn these facts, says the bottom of the river is a quicksand, and the probability is the money will never be recovered.

WASHINGTON CITY.

SATURDAY MORNING, MAY 30, 1857.

THE VIRGINIA ELECTION.

The election in Virginia for attorney general, members of Congress, and members of the legislature took place yesterday. "All of the delegation (says the Richmond Enquirer) in the last Congress were candidates for re-election except Messrs. Kidwell and McMullin. Edgar Snowden, in the Alexandria, A. J. Crane, in the Richmond, and John S. Carlile, in the Parkersburg district, were the only American and whig candidates in the field for Congress, so far as we are informed, though in other districts gentlemen attached to one or the other of those two parties were probably voted for. In some of the districts the regular democratic nominees were opposed by distribution democrats, who, to a great extent, were voted for by whigs and Americans. The Hon. Chas. J. Faulkner, democrat, was opposed in his district by the Hon. William Lucas, distribution democrat. In the Norfolk district General Millson, democrat, had no serious opposition. In the last Congress the whole delegation, with the exception of Mr. Carlile, were democrats. The legislature now elected will have to choose a United States senator, in the place of Mr. Hunter."

Partial returns from several congressional districts indicate the election of Mr. Tucker, the democratic candidate for attorney general, by an overwhelming majority. The democrats have secured both branches of the State legislature by an increased majority.

Our friends throughout the country will rejoice to learn that the city of Richmond—for years and years the stronghold of the opposition—has surrendered at last to the democrats. The vote for Congress stands:

Caskie	1,456
Crane	1,058
Democratic majority	398

The Richmond Enquirer of yesterday morning says:

"The beleaguered castle of the enemy, which has heretofore defied assault, has yielded at last. The metropolis of Virginia is no longer under the van of know-nothingism. Truth has triumphed. Patriotism has prevailed, and Richmond is redeemed.

"To the noble old-line whigs who, imitating the example of a worthy son of the gallant Clay, nobly assisted us in successfully storming the strongest fortress of know-nothingism yesterday, we would extend the right hand of faithful fellowship, and congratulate them cordially on our mutual triumph."

The returns are coming in slowly, but enough has been received from the 9th and 10th congressional districts to make it quite certain that the Hon. Wm. Smith and the Hon. Chas. Jas. Faulkner will be returned by largely-increased majorities over previous elections. The same may be said of Judge Caskie in the Richmond district—the city of Richmond itself giving the democratic ticket some four hundred majority—a thing almost unprecedented in its history. Judging, therefore, of the spirit of our party throughout the State by what we have seen nearest to us, we can scarcely doubt that the whole democratic congressional ticket has been electe.i.

We have received the following reported majorities from the seventh congressional district:

	Smith.	Snowden.
Alexandria		433
Orange	250	
Culpeper	162	
Fauquier	150	
Fairfax	200	
Prince William	400	
Rappahannock	69	

Four counties to hear from, which will still further increase Governor Smith's majority.

From the Winchester district (the eighth) the news is of the most gratifying character, as will be seen from the following despatch:

MARTINSBURG, May 29.—Faulkner's majority in the eighth district is *two thousand and ninety-one!* Page county gives him 913, Berkeley 300, Clark 169, Frederick 527, Jefferson 115. Loudoun gives Lucas 564.

All honor to the heroic and steadfast democracy of the glorious Old Dominion! The insidious and silly bribe offered in the shape of distribution could not for a moment shake their constancy or warp their fidelity to principle.

ANNEXATION IN LIBERIA.

President Benson, of Liberia, in his message to the extra session of the legislature of April 6, informs that body that, in conformity with the act of the legislature entitled "An act for the relief of the State of Maryland, in Liberia," approved the 7th of February, 1857, he despatched a force of 115 men, under command of Major General Roberts, and he also negotiated a loan for the benefit of the State of $5,000, to be refunded in annual instalments of $500, at 6 per cent. interest. Among the documents accompanying the message is a copy of a treaty of friendship, offensive and defensive, concluded February 19 between the republic of Liberia and the State of Maryland, in Liberia, ratified by the senate on the 20th February, and copies of the requisite bonds conditioned for the payment to the republic of the sum of $20,000, in annual instalments of $3,000, and pledging the revenue and the sources of revenue of the State of Maryland, in Liberia, thereto.

In reference to the difficulties between the State of Liberia and the native tribes, the message says "that the necessity for offensive and defensive operations by the forces of the republic was superseded by the conclusion of a treaty of peace, friendship, and indemnification between the allies and the twelve hostile tribes on terms mutually satisfactory and honorable."

The principal business submitted to the consideration of the extra session of the legislature was a formal application on the part of the State of Maryland to be admitted into the republic as the "county of Cape Palmas." The application states that the revenue of the State arising from imports is $1,800 per annum, and the liabilities amount to $3,000, and the assets, including public buildings and bills payable, to $10,000. The number of American inhabitants in the State is 900, and the aboriginal population is estimated at 60,000. The new county will be entitled to two senators and three members in the lower branch of the legislature.

The measure is strongly urged by the governor, and is no doubt the law at this time.

CONGRESSIONAL NOMINATION.

Hon. Sydenham Moore, of Greene county, has received the democratic nomination for Congress in the fourth district, Alabama—so says the Montgomery Advertiser.

Three United States senators from New Hampshire have died within three years, and all while in office, viz: Messrs. Norris, Charles G. Atherton, and James Bell.